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| APPLICATION NO.   | FILING DATE | FIRST NAMED INVENTOR     | ATTORNEY DOCKET NO.            | CONFIRMATION NO. |
|---|-------------|--------------------------|--------------------------------|------------------|
| 10/028,541  | 12/19/2001  | Richard Joseph Caballero | M-12420-2C US                  | 2447             |
| 33031   | 7590        | 06/03/2005               |                                |                  |
| CAMPBELL STEPHENSON ASCOLESE, LLP<br>4807 SPICEWOOD SPRINGS RD.<br>BLDG. 4, SUITE 201<br>AUSTIN, TX 78759 |             |                          |                                |                  |
|   |             |                          | EXAMINER<br>O CONNOR, GERALD J |                  |
|   |             |                          | ART UNIT<br>3627               | PAPER NUMBER     |

DATE MAILED: 06/03/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/028,541

Applicant(s)

Caballero et al.

Examiner

O'Connor

Art Unit

3627

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE ONE MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on November 29, 2004 (Request for Status).
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-44 is/are pending in the application.
- 4a) Of the above claim(s) none is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 1-44 are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Election/Restriction*

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 1-15, drawn to a method of electronic shopping comprising an arrangement for remote ordering, classified in class 705, subclass 26.
  - II. Claims 16-30, drawn to a system or arrangement comprising an application of database or data structure, classified in class 707, subclass 104.1.
  - III. Claims 31-44, drawn to a data processing system for generating database or data structure (e.g., via user interface), classified in class 707, subclass 102.

2. The inventions are distinct, each from the other because of the following reasons:

Invention I is related to each of Inventions II and III, as process and apparatus for its practice. The inventions are distinct if it can be shown that *either*: (1) the process as claimed can be practiced by another, materially different apparatus, or by hand, *or* (2) the apparatus as claimed can be used to practice another, materially different process. (MPEP § 806.05(e)). In this case, the process as claimed can be practiced by another, materially different apparatus, or by hand, such as, by hand.

Inventions II and III are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct from each other if they are shown to be separately usable. In this case, Invention II has separate utility from Invention III, such as for

use when the account number is known and can be typed in directly, rather than selected from a list of accounts. See MPEP § 806.05(d).

3. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

4. A telephone call was placed to Mr. Samuel G. Campbell III, Esq. (Reg. No. 42,381), attorney for applicant, on February 24, 2005, to discuss an oral election to the above restriction requirement, but the call did not result in an election being made.

5. Applicant is advised that the reply to this requirement, to be complete, *must* include an election of the invention to be examined, even if the requirement be traversed (37 CFR 1.143).

#### ***Conclusion***

6. A letter from applicant, inquiring as to the status of the instant application, was received on November 29, 2004, and is hereby acknowledged. While, regrettably, it appears that no response has heretofore been provided, this Office action is presumed to be inherently responsive to that request.

7. Any inquiry concerning this communication, or earlier communications, should be directed to the examiner, Jerry O'Connor, whose telephone number is (703) 305-1525, and whose facsimile number is (703) 746-3976.

PLEASE TAKE NOTICE that on April 14, 2005 the examiner's telephone and facsimile numbers will be changing, to (571) 272-6787 and (571) 273-6787, respectively.

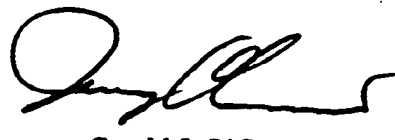
The examiner can normally be reached weekdays from 9:30 to 6:00.

If attempts to reach the examiner are unsuccessful, the examiner's supervisor, Mr. Robert Olszewski, can be reached at (703) 308-5183, or, beginning April 14, 2005, at (571) 272-6788.

Official replies to this Office action may be submitted by any *one* of fax, mail, or hand delivery. **Faxed replies are preferred and should be directed to (703) 872-9306 (not changing).** Mailed replies should be addressed to "Commissioner for Patents, PO Box 1450, Alexandria, VA 22313-1450." Hand delivered replies should be delivered to the "Customer Service Window, Randolph Building, 401 Dulany Street, Alexandria, VA 22314."

GJOC

February 24, 2005

 (2-24-05)

Gerald J. O'Connor  
Patent Examiner  
Group Art Unit 3627